

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOANNE HICKS, :
Plaintiff, :
: 21 Civ. 4709 (LGS)
-against- :
: ORDER
STARBUCKS CORPORATION, :
Defendant. :
:
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, on August 3, 2022, Plaintiff filed a motion in limine in anticipation of trial.

The motion is resolved as follows:

1. Plaintiff's motion to preclude Defendant from arguing that the alleged damages were caused by preexisting injuries or conditions is DENIED. "Plaintiff cannot introduce evidence of causation -- whether through an expert or otherwise -- and then prohibit Defendant[] from arguing that 'plaintiff did not sustain any causally related injury.'" *Piepes v. Nai Ent. Holdings LLC*, No. 17 Civ. 505, 2019 WL 13224981, at *2 (E.D.N.Y. Sept. 26, 2019). Defendant is entitled to cross-examine Plaintiff's expert witness regarding the causation of Plaintiff's alleged damages and make any other argument fairly inferable from cross-examination, fact witnesses or other documents introduced. *See id.*; Fed. R. Evid. 611.

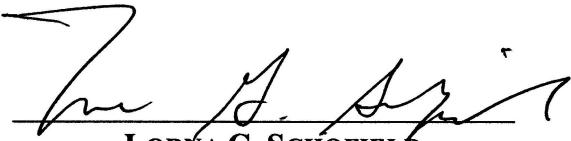
2. Plaintiff's motion to preclude Defendant from arguing that Plaintiff should not be compensated for any "eggshell plaintiff" injuries is DENIED AS MOOT, as Defendant represents that it does not intend to make any such argument. For clarity, Defendant may argue that a defendant is liable only for the additional harm or aggravation that is caused, and is not "retroactively liable for the pre-existing condition itself, nor for the pain or other symptoms produced by that condition prior to any exacerbation caused by defendant's negligence."

Ventarola v. Narvaez, No. 18 Civ. 3231, 2021 WL 1536540, at *13 (S.D.N.Y. Feb. 16, 2021). In sum, it is hereby

ORDERED that Plaintiff's motion to preclude Defendant from arguing (i) that the alleged damages were caused by preexisting injuries or conditions is DENIED and (ii) that Plaintiff should not be compensated for any "eggshell plaintiff" injuries is DENIED AS MOOT.

The Clerk of Court is respectfully directed to close the motion at Dkt. No. 31.

Dated: October 26, 2022
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE